

REMARKS

I. Status of the Claims

Claims 1-19, 21-69, and 71-99 are pending in this application. Claims 20 and 70 were cancelled without prejudice or disclaimer by the August 25, 2006 Amendment After Final, which should now be entered in light of the presently filed RCE. In addition, Claims 1 and 51 were amended in the Amendment After Final to clarify that the composition comprises at least two ingredients: (1) a cosmetically acceptable medium comprising water and optionally at least one organic solvent, and (2) at least one fluorescent dye comprised in said medium. No new matter was added by the August 25, 2006 Amendment After Final, and support for the amendment can be found throughout the original specification and claims, e.g., cancelled claims 20 and 70.

II. Allowable Subject Matter

Applicants thank the Examiner for indicating that claims 7-40 and 57-88 contain allowable subject matter and that claims 41-50 and 89-99 are allowed. However, Applicants maintain that the remaining pending claims, claims 1-6 and 51-56, are also patentable for at least the reasons set forth below, and therefore wish to continue prosecution of all the pending claims in this application at this time.

III. Rejection under 35 U.S.C. § 102(b)

The Examiner has rejected claims 51-56 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 4,256,458 to Degen et al. ("Degen") for reasons of record. Applicants respectfully traverse this rejection for at least the reasons of record and the additional reasons presented below.

Applicants respectfully submit that Degen fails to teach or disclose every aspect of the presently claimed composition. Specifically, Degen does not teach (1) "a

cosmetically acceptable medium wherein said medium is water and optionally an organic solvent"; or (2) "at least one fluorescent dye present in an amount sufficient to dye keratin materials with a lightening effect, comprised in said medium" (see claim 1 as amended).

The cited compositions of Degen do not contain water. See, e.g., Examples 3, 5, and 8. Thus, Degen fails to teach "a cosmetically acceptable medium wherein said medium is water." Further, all of the examples of Degen teach the use of either piperidine or a picoline. As shown by the enclosed MSDS sheets for piperidine and alpha- and gamma-picolines, these are not substances that would be considered "cosmetically acceptable" by one of ordinary skill. To the contrary, all of these substances are flammable or highly flammable, react with oxidizing agents (piperidine "reacts violently"), are toxic, and are severely irritating to skin, among other things. See attached MSDS information for each of these compounds. Clearly these are not ingredients that would be present in a composition to be used on human keratin fibers, and indeed, Degen's compositions, as discussed in Applicants' prior response, are for dyeing paper and anionically modified fibers, not human keratin.

Degen is also silent with respect to the "amount sufficient to dye keratin materials with a lightening effect," as well as to the lightening effect of dye in general, because, as noted above, Degen has nothing to do with keratin materials. Thus, the Examiner's rejection is improper because Degen fails to teach each and every element of the claimed composition. Accordingly, with respect to claims 51-56, Applicants submit that the Examiner has failed to demonstrate that the rejected claims are anticipated by Degen, and therefore request that the § 102(b) rejection be withdrawn.

IV. Rejection under 35 U.S.C. § 103(a)

The Examiner has rejected claims 1-6 under 35 U.S.C. § 103(a) as unpatentable over Degen for the reasons of record. Applicants respectfully traverse this rejection for at least the reasons of record and the additional reasons presented below.

Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness. The Examiner relies on Degen and argues that it would have been obvious to one of ordinary skill in the art to modify Degen to use the dye in a composition for keratin fibers. See Office Action at 4. Applicants disagree. As argued of record and above, Degen is not analogous art. Degen claims a method for dyeing paper and anionically modified fibers. Degen does not suggest using the claimed methine dyes in any application outside of dyeing paper and anionically modified fibers, and in no way suggests using the claimed methine dyes in a cosmetic method or application. Degen does not teach or suggest a process for dyeing human keratin materials, let alone a process for dyeing human keratin materials with a lightening effect.

Further, Degen does not teach or suggest carrying out the claimed process with “a composition comprising, a cosmetically acceptable medium, wherein said medium is water and optionally an organic solvent and at least one fluorescent dye present in an amount sufficient to dye keratin materials with a lightening effect, comprised in said medium...” (see, e.g., claim 1 as amended). Degen does not provide any motivation to one of skill in the art to use the combination of the claimed dye, and a cosmetically acceptable medium, to dye human keratin material. As argued of record, even if one of skill in the art did use the methine dyes disclosed in Degen, in a cosmetically acceptable medium, to dye human keratin fibers, there could not possibly have been a reasonable

expectation of success based on Degen's disclosure alone, absent improper hindsight, for at least the reason that Degen's disclosed compositions are all cosmetically unacceptable.

Accordingly, with respect to claims 1-6, the Examiner has failed to demonstrate that the rejected claims are obvious in view of Degen, and therefore request that the § 103(a) rejection be withdrawn.

V. Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims.

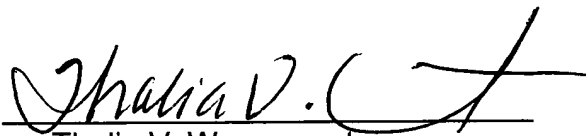
Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: December 21, 2006






By:


Thalia V. Warnement
Reg. No. 39,064

Attachments:

<http://www.ilo.org/encyclopedia> MSDS information for piperidine, 4-methylpyridine and 2-methylpyridine.

PIPERIDINE		ICSC: 0317 November 2003	
Hexahydropyridine Azacyclohexane Pentamethyleneimine			
CAS #	110-89-4	$C_5H_{11}N$ / $CH_2(CH_2)_4NH$	
RTECS #	TM3500000	Molecular mass: 85.2	
UN #	2401		
EC #	613-027-00-3		
TYPES OF HAZARD / EXPOSURE	ACUTE HAZARDS / SYMPTOMS	PREVENTION	FIRST AID / FIRE FIGHTING
FIRE	Highly flammable.	NO open flames, NO sparks, and NO smoking.	Powder, alcohol-resistant foam, water in large amounts, carbon dioxide.
EXPLOSION	Vapour/air mixtures are explosive.	Closed system, ventilation, explosion-proof electrical equipment and lighting. Do NOT use compressed air for filling, discharging, or handling.	In case of fire: keep drums, etc., cool by spraying with water.
EXPOSURE		STRICT HYGIENE!	IN ALL CASES CONSULT A DOCTOR!
Inhalation	Burning sensation. Cough. Laboured breathing. Shortness of breath. Sore throat. Symptoms may be delayed (see Notes).	Ventilation, local exhaust, or breathing protection.	Fresh air, rest. Half-upright position. Artificial respiration may be needed. Refer for medical attention.
Skin	MAY BE ABSORBED! Redness. Skin burns. Pain.	Protective gloves. Protective clothing.	Remove contaminated clothes. Rinse skin with plenty of water or shower. Refer for medical attention.
Eyes	Redness. Pain. Blurred vision. Severe deep burns.	Face shield, or eye protection in combination with breathing protection.	First rinse with plenty of water for several minutes (remove contact lenses if easily possible), then take to a doctor.
Ingestion	Abdominal pain. Burning sensation. Laboured breathing. Shock or collapse.	Do not eat, drink, or smoke during work.	Rinse mouth. Do NOT induce vomiting. Give plenty of water to drink. Refer for medical attention.
SPILLAGE DISPOSAL		PACKAGING LABELLING	
Collect leaking liquid in sealable containers. Absorb remaining liquid in sand or inert absorbent and remove to safe place. (Extra personal protection: self-		EU Classification Symbol: <u>F</u> , <u>T</u> R: <u>11-23/24-34</u>	

contained breathing apparatus.)	S: (1/2-)-16-26-27-45 UN Classification UN Hazard Class: 8 UN Subsidiary Risks: 3 UN Pack Group: I
EMERGENCY RESPONSE	STORAGE
Transport Emergency Card: TEC (R)-80GCF1-I NFPA Code: H 3; F 3; R 3;	Fireproof. Separated from strong oxidants, acids, and incompatible materials. See Chemical Dangers.
<div>      </div> <p>Prepared in the context of cooperation between the International Programme on Chemical Safety and the Commission of the European Communities © IPCS, CEC 1999</p> <p>SEE IMPORTANT INFORMATION ON BACK</p>	

PIPERIDINE		ICSC: 0317
IMPORTANT DATA		
<p>PHYSICAL STATE; APPEARANCE: COLOURLESS LIQUID, WITH CHARACTERISTIC ODOUR.</p> <p>PHYSICAL DANGERS: The vapour is heavier than air and may travel along the ground; distant ignition possible.</p> <p>CHEMICAL DANGERS: The substance decomposes on burning producing toxic fumes including nitrogen oxides. The substance is a medium strong base. Reacts violently with oxidants. Reacts violently with dicyanofurazan, N-nitrosoacetanilide and 1-perchloryl-piperidine, causing explosion hazard.</p> <p>OCCUPATIONAL EXPOSURE LIMITS: TLV not established.</p>		<p>ROUTES OF EXPOSURE: The substance can be absorbed into the body by inhalation of its vapour, through the skin and by ingestion.</p> <p>INHALATION RISK: No indication can be given about the rate in which a harmful concentration in the air is reached on evaporation of this substance at 20°C.</p> <p>EFFECTS OF SHORT-TERM EXPOSURE: The substance is corrosive to the eyes, the skin and the respiratory tract. Corrosive on ingestion. Inhalation of the vapour at high level may cause lung oedema (see Notes). The effects may be delayed. Medical observation is indicated.</p>
PHYSICAL PROPERTIES		
<p>Boiling point: 106°C Melting point: -7°C Relative density (water = 1): 0.86 Solubility in water: miscible Vapour pressure, kPa at 29.2°C: 5.3 Relative vapour density (air = 1): 3.0</p>		<p>Relative density of the vapour/air-mixture at 20°C (air = 1): 1.10 Flash point: 16°C c.c. Octanol/water partition coefficient as log Pow: 0.84</p>
ENVIRONMENTAL DATA		
NOTES		
The symptoms of lung oedema often do not become manifest until a few hours have passed and they are		

aggravated by physical effort. Rest and medical observation is therefore essential. Immediate administration of an appropriate inhalation therapy by a doctor or a person authorized by him/her, should be considered.

ADDITIONAL INFORMATION**LEGAL NOTICE**

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4-METHYLPYRIDINE**ICSC: 0803****March 1999**

4-Picoline
gamma-picoline
p-Picoline

CAS # 108-89-4 $C_6H_7N / (C_5H_4N)CH_3$
 RTECS # UT5425000 Molecular mass: 93.1
 UN # 2313
 EC # 613-037-00-8

TYPES OF HAZARD / EXPOSURE	ACUTE HAZARDS / SYMPTOMS	PREVENTION	FIRST AID / FIRE FIGHTING
FIRE	Flammable. Gives off irritating or toxic fumes (or gases) in a fire.	NO open flames, NO sparks, and NO smoking.	Powder, alcohol-resistant foam, water spray, carbon dioxide.
EXPLOSION	Above 57°C explosive vapour/air mixtures may be formed.	Above 57°C use a closed system, ventilation, and explosion-proof electrical equipment.	In case of fire: keep drums, etc., cool by spraying with water.
EXPOSURE		PREVENT GENERATION OF MISTS!	
Inhalation	Burning sensation. Cough. Dizziness. Drowsiness. Headache. Nausea. Sore throat. Unconsciousness. Weakness.	Ventilation, local exhaust, or breathing protection.	Fresh air, rest. Refer for medical attention.
Skin	MAY BE ABSORBED! Dry skin. Redness. Burning sensation. Pain. Blisters. (Further see Inhalation).	Protective gloves. Protective clothing.	Remove contaminated clothes. Rinse skin with plenty of water or shower. Refer for medical attention.
Eyes	Redness. Pain. Severe deep burns.	Face shield, or eye protection in combination with breathing protection.	First rinse with plenty of water for several minutes (remove contact lenses if easily possible), then take to a doctor.
Ingestion	Abdominal pain. Burning sensation. Diarrhoea. Vomiting. (Further see Inhalation).	Do not eat, drink, or smoke during work.	Rinse mouth. Do NOT induce vomiting. Rest. Refer for medical attention.
SPILLAGE DISPOSAL		PACKAGING LABELLING	
Collect leaking and spilled liquid in sealable containers as far as possible. Absorb remaining liquid in sand or inert absorbent and remove to safe place. Chemical protection suit including self-contained breathing apparatus.		Marine pollutant. EU Classification Symbol: T R: 10-20/22-24-36/37/38 S: (1/2-)-26-36-45	

		UN Classification UN Hazard Class: 3 UN Pack Group: III
EMERGENCY RESPONSE		STORAGE
Transport Emergency Card: TEC (R)-832/30G35. NFPA Code: H 2; F 2; R 0.		Fireproof. Separated from strong oxidants. Well closed.
 <p> IPCS International Programme on Chemical Safety </p> <p>     </p>		Prepared in the context of cooperation between the International Programme on Chemical Safety and the Commission of the European Communities © IPCS, CEC 1999 SEE IMPORTANT INFORMATION ON BACK

4-METHYLPYRIDINE**ICSC: 0803****IMPORTANT DATA**

PHYSICAL STATE; APPEARANCE:
 COLOURLESS LIQUID, WITH CHARACTERISTIC
 ODOUR.

CHEMICAL DANGERS:
 The substance decomposes on burning producing
 toxic fumes including nitrogen oxides. Reacts with
 oxidants.

OCCUPATIONAL EXPOSURE LIMITS:
 TLV not established.

ROUTES OF EXPOSURE:
 The substance can be absorbed into the body by
 inhalation through the skin and by ingestion.

INHALATION RISK:
 A harmful contamination of the air can be reached
 rather quickly on evaporation of this substance at 20°
 C.

EFFECTS OF SHORT-TERM EXPOSURE:
 The substance is corrosive to the eyes and the skin.
 The vapour of the substance irritates the respiratory
 tract. Exposure at high level may result in
 unconsciousness.

**EFFECTS OF LONG-TERM OR REPEATED
 EXPOSURE:**
 The liquid defats the skin.

PHYSICAL PROPERTIES

Boiling point: 144-145°C
 Melting point: 3.7°C
 Relative density (water = 1): 0.96
 Solubility in water: miscible
 Vapour pressure, kPa at 25°C: 0.76
 Relative vapour density (air = 1): 3.2

Relative density of the vapour/air-mixture at 20°C (air
 = 1): 1.02
 Flash point: 57°C (o.c.)
 Explosive limits, vol% in air: 1.3-8.7
 Octanol/water partition coefficient as log Pow: 1.2

ENVIRONMENTAL DATA**NOTES**

Also consult ICSC # 0801 (2-Methylpyridine) and 0802 (3-Methylpyridine).

ADDITIONAL INFORMATION

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2-METHYLPYRIDINE**ICSC: 0801****March 1999**

2-Picoline
alpha-Picoline
o-Picoline

CAS # 109-06-8 C_6H_7N / $C_5H_4N(CH_3)$
 RTECS # TJ4900000 Molecular mass: 93.1
 UN # 2313
 EC # 613-036-00-2

TYPES OF HAZARD / EXPOSURE	ACUTE HAZARDS / SYMPTOMS	PREVENTION	FIRST AID / FIRE FIGHTING
FIRE	Flammable. Gives off irritating or toxic fumes (or gases) in a fire.	NO open flames, NO sparks, and NO smoking.	Powder, alcohol-resistant foam, water spray, carbon dioxide.
EXPLOSION	Above 26°C explosive vapour/air mixtures may be formed.	Above 26°C use a closed system, ventilation, and explosion-proof electrical equipment.	In case of fire: keep drums, etc., cool by spraying with water.
EXPOSURE		PREVENT GENERATION OF MISTS!	
Inhalation	Cough. Dizziness. Drowsiness. Headache. Nausea. Sore throat. Unconsciousness. Weakness.	Ventilation, local exhaust, or breathing protection.	Fresh air, rest. Refer for medical attention.
Skin	MAY BE ABSORBED! Dry skin. Redness. Burning sensation. Pain. Blisters. (Further see Inhalation).	Protective gloves. Protective clothing.	Remove contaminated clothes. Rinse skin with plenty of water or shower. Refer for medical attention.
Eyes	Redness. Pain. Blurred vision. Severe deep burns.	Face shield, or eye protection in combination with breathing protection.	First rinse with plenty of water for several minutes (remove contact lenses if easily possible), then take to a doctor.
Ingestion	Abdominal pain. Burning sensation. Diarrhoea. Vomiting. (Further see Inhalation).	Do not eat, drink, or smoke during work.	Rinse mouth. Do NOT induce vomiting. Refer for medical attention.
SPILLAGE DISPOSAL		PACKAGING LABELLING	
Collect leaking and spilled liquid in sealable containers as far as possible. Absorb remaining liquid in sand or inert absorbent and remove to safe place. Chemical protection suit including self-contained breathing apparatus.		Marine pollutant. EU Classification Symbol: <u>Xn</u> R: <u>10-20/21/22-36/37</u> S: <u>(2-)-26-36</u> UN Classification	

		UN Hazard Class: 3 UN Pack Group: III
EMERGENCY RESPONSE		STORAGE
Transport Emergency Card: TEC (R)-832/30G35 NFPA Code: H 2; F 2; R 0.		Fireproof. Separated from oxidants.
    		Prepared in the context of cooperation between the International Programme on Chemical Safety and the Commission of the European Communities © IPCS, CEC 1999 SEE IMPORTANT INFORMATION ON BACK

2-METHYLPYRIDINE**ICSC: 0801****IMPORTANT DATA****PHYSICAL STATE; APPEARANCE:**

COLOURLESS LIQUID, WITH CHARACTERISTIC ODOUR.

CHEMICAL DANGERS:

The substance decomposes on burning producing toxic fumes including nitrogen oxides. Reacts with oxidants. Attacks copper and its alloys.

OCCUPATIONAL EXPOSURE LIMITS:

TLV not established.

ROUTES OF EXPOSURE:

The substance can be absorbed into the body by inhalation of its vapour, through the skin and by ingestion.

INHALATION RISK:

A harmful contamination of the air can be reached rather quickly on evaporation of this substance at 20° C.

EFFECTS OF SHORT-TERM EXPOSURE:

The substance is corrosive to the eyes and the skin. The vapour of the substance irritates the respiratory tract. Exposure at high level may result in unconsciousness.

EFFECTS OF LONG-TERM OR REPEATED EXPOSURE:

The liquid defats the skin.

PHYSICAL PROPERTIES

Boiling point: 128-129°C°C
 Melting point: -70°C
 Relative density (water = 1): 0.95
 Solubility in water: miscible
 Vapour pressure, kPa at 20°C: 1.2
 Relative vapour density (air = 1): 3.2

Relative density of the vapour/air-mixture at 20°C (air = 1): 1.03
 Flash point: 26°C (c.c.)
 Auto-ignition temperature: 538°C
 Explosive limits, vol% in air: 1.4-8.6
 Octanol/water partition coefficient as log Pow: 1.1

ENVIRONMENTAL DATA**NOTES**

Also consult ICSC # 0802 (3-Methylpyridine) and 0803 (4-Methylpyridine).

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